

REMARKS/ARGUMENTS

Claims 2-6, 9, 11, 25-29, 32-33, 57, 59-60, 62-64, 70, 72-73, 75-78, and 81-89 are currently pending in this application. Claims 64, 78, and 84 have been amended. Claims 88-89 have been added. The amendments find full support in the original specification, claims, and drawings. No new matter has been added. In view of the above amendments and remarks that follow, reconsideration and an early indication of allowance of the now-pending claims 2-6, 9, 11, 25-29, 32-33, 57, 59-60, 62-64, 70, 72-73, 75-78, and 81-89 are respectfully requested.

Claims 2-6, 9, 11, 25-29, 32-33, 59-60, 62-64, 72, 73, 75-78, and 81-86 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellis et al. (U.S. Patent No. 7,171,174). Claims 57 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis and further in view of Blum (U.S. Patent No. 5,918,223). Claim 87 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis and further in view of Yoshinobu, (U.S. Patent No. 5,734,444) and Sun (U.S. Patent No. 6,725,102). Applicant respectfully traverses these rejections.

Independent claim 64 has been amended to recite "first and second delivery start times" where the method includes "automatically tuning to the first audio channel for receiving the selected first audio piece based on the identified . . . first delivery start time," and "automatically tuning to the second audio channel for receiving the selected second audio piece based on the identified . . . second delivery start time." (Emphasis added). Any tuning that occurs in Ellis is manually invoked by a user or, if automatic, based on detection that a station is delivering content of interest. Nothing in Ellis teaches or suggests tuning based on "delivery start times" as is now claimed in claim 64. (Emphasis added).

Amended claim 64 further recites "outputting the temporarily stored first and second audio pieces responsive to a detected playback condition which invokes playback of the customized audio program without switching from the first audio channel to the second audio channel during the playback." (Emphasis added). In contrast, according to Ellis' system, if one song is being transmitted by a first radio station and a second song is transmitted by a second radio station, the system tunes to the respective stations to output each of the songs for hearing

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by a user. (See, Ellis provisional p. 4, line 25 - p. 5, line 2). The songs cannot be output in Ellis' system without tuning to the respective radio stations that transmit the songs. Accordingly, claim 64 is now in condition for allowance.

Independent claims 78 and 84 include limitations that are similar to the limitations of claim 64 which make claim 64 allowable. Accordingly, claims 78 and 84 are in condition for allowance.

Claims 2-6, 9, 11, 25-29, 32-33, 57, 59-60, 62-63, 70, 72-73, 75-77, and 81-83 are also in condition for allowance because they depend on an allowable base claim, and for the additional limitations that they contain.

Claims 88 and 89 are new in this application. Claim 88 is a new independent claim that recites, among other things, "receiving a plurality of musical pieces transmitted via an audio channel," and "selectively downloading one or more of the plurality of musical pieces based on a comparison of the user's musical preference information with the musical characteristic information of each of the plurality of musical pieces, wherein the selectively downloading downloads an entirety of a first one of the plurality of musical pieces that is determined to satisfy the user's musical preference, but not an entirety of a second one of the plurality of musical pieces that is determined to not satisfy the user's musical preference." In contrast, Ellis discloses that

"[t]he system may include multiple radio inputs. The radio signals from each input may be simultaneously digitized and recorded. For example, the user may be allowed five favorite stations in a system with six tuners. The system may always be recording the favorite stations in addition to whatever station the user is currently listening to." (Ellis Provisional, p. 4, lines 16-19). (Emphasis added).

Accordingly, claim 88 is in condition for allowance.

Claim 89 is a new independent claim that also includes a "selectively downloading" limitation. In addition, claim 89 also recites "automatically processing audio signals of a plurality of musical pieces and computing, for each of the plurality of musical pieces, values for a plurality of musical characteristics based on the automatically processed audio signals, wherein the plurality of musical characteristics includes tempo," and "storing the values for the plurality

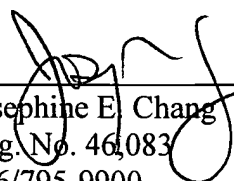
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of musical characteristics, including the value of the tempo, in an audio vector generated for each of the plurality of musical pieces."

Blum is directed to "finding audio data files that sound similar to given sounds, or that sound similar to predefined classes of sounds." (Col. 1, lines 14-19). For non-music files, Blum's system measures "loudness, bass, pitch, brightness, bandwidth, and Mel-frequency cepstral coefficients (MFCCs) at periodic intervals (referred to as 'frames') over the length of the sound file." (Col. 3, lines 4-10). A feature vector is then created based on these measurements. (Col. 3, line 16-18). If the audio files are music files, Blum creates a separate "rhythm feature vector." (Col. 3, lines 20-21). Although Blum mentions the use of tempo to calculate rhythm, nothing in Blum teaches or suggests storing a tempo value "in an audio vector generated for each of the plurality of musical pieces" as is claimed in claim 89. Accordingly, claim 89 is in condition for allowance.

In view of the above amendments and remarks, reconsideration and an early indication of allowance of the now-pending claims 2-6, 9, 11, 25-29, 32-33, 57, 59-60, 62-64, 70, 72-73, 75-78, and 81-89 are respectfully requested.

Respectfully submitted,
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